

FISPA

Paul Rice, Executive Director PO Box 1692, Jackson, TN 38302-1692 ph. (731)423-2645

June 5, 2006

RE: AT&T. Inc. and Bellsouth Corporation

WC 06-74 and DA 06-904

## SUMMARY

This letter contains comments on behalf of the Federation of Internet Solution Providers of the Americas, Inc. concerning the proposed Bellsouth-ATT merger. The wholesale ISP and voice industries once supported by the rules of “common carriage” and the Telecom Act of 1996 is under attack on a number of fronts, and this merger would contribute to a loss of consumer choices, innovation, and jobs. FISPA’s membership believes that the wholesale ISP market, like the CLEC wholesale market, is under a major threat from this merger, particularly as data, voice, and video, escape the meager protections left under the Telecom Act of 1996 by FCC redefinition of packetized data, voice, and video as “information services”.

FISPA is foremost a “buyer’s club” consisting at various times of 70 to 130 internet service providers, with a strong concentration in the Bellsouth footprint. Some are CLECs – facilities-based and otherwise- but most are very small “mom and pop” to medium sized ISP operations. Earthlink, for example, is not a member. FISPA members will need regulatory protection should this merger be approved.

## COMMENT

After the Brand X decision allowed redefinition of DSL as an “information service”, Bellsouth dictated that our members could execute one of two DSL “agreements” or have their DSL services turned off. A third alternative was for FISPA to enter into a “Commercial Agreement” for its members, which was substantively non-negotiable. Any “information service” riding Bellsouth lines had very little bargaining strength after Brand X, so we were more or less forced to accept the terms offered. In the Agreement, Bellsouth refused to allow the FISPA membership to sell either 256K DSL or 6mg DSL. Tellingly, Bellsouth did hold out a carrot to get FISPA to sign the agreement- that in March or April Bellsouth would follow through on promises of a 6 mg ADSL product and that Bellsouth would entertain “volume discounting” proposals from FISPA just as soon as the computer program known as “SOEG” could handle pricing variations.

Experts that I trust tell me that this programming delay excuse was ‘disingenuous’; it is just not that difficult a project. In the same ilk, Bellsouth did not have any problem with an immediate roll-out of its own 6 mg DSL retail product, which consumers can only get Bellsouth. Worse still, members reported

that ISP customer information (CPNI) given to Bellsouth under legal protection of the Computer Inquiry orders was no longer considered “off limits” by Bellsouth’s retail division. In other words, after Brand X, there is evidence that Bellsouth sales representatives were going down the list of my members customers to call on them and undercut the member’s pricing.

March and April have come and gone and we understand that Bellsouth has no interest in negotiating for restoration of services taken away, such as 256K DSL (which Bellsouth continues to sell despite telling us it was discontinued due to lack of interest), or the 6mb DSL. The “Commercial Agreement” for DSL also gives unilateral control over the wholesale market to Bellsouth as Bellsouth retained a veto over who we can trade with as members and restrains us from allowing sizable companies to order services under our agreement. No one was surprised: with such expectations set by a nine-state company, we are naturally leary of a national version. We were somewhat relieved to see a subcommittee of the House Judiciary Committee reviewing the anti-trust consequences of the merger in the net neutrality context.

Even in the face of these restraints on trade, FISPA members could, outside of their FISPA membership, directly purchase competing services from AT&T or from SBC, both of which were and are operating in the southeast. Where there were three choices, there is now, with the merger of AT&T and SBC, one less choice, and with the Bellsouth-AT&T merger, the competition for the business of the wholesale industry has diminished further still. There was never a ‘common carriage’ requirement on cable networks, and wireless can’t technically carry a “triple play”; they will not be full competitors of the merged entity. The Bellsouth network is the only ubiquitous network in the southeast capable of serving as the backbone of a developing wholesale industry until the cable industry opens up and regional transport companies catch up. It is unlikely that the industry can survive if the company controlling the ubiquitous network continues to ban certain competitors and offers wholesale pricing that cannot compete with Bellsouth’s own retail pricing.

In light of the reasons for divestiture in the 1980s and the experiences under the Telecom Act of 1996, it is foreseeable that AT&T will act without benevolent regard to competitors in favor of its own shareholders.

“When ever there is an interest and power to do wrong”, wrote James Madison to Thomas Jefferson in 1788, “wrong will generally be done....”

“In questions of power, then”, wrote Thomas Jefferson, “let no more be heard of confidence in man, but bind him down from mischief by the chains of the [law]...”

“The time to guard against corruption and tyranny is before they shall have gotten hold of us. It is better to keep the wolf out of the fold than to trust to drawing his teeth and talons after he shall have

entered.” Thomas Jefferson, notes on the State of Virginia, c. 1781-1783.

In order for a wholesale industry to survive after this merger, it will need legal protection-preferably incorporated into the regulatory authority for this merger.

## CONCLUSION

The wholesale industry and/or FISPAs need long-term wholesale market access to existing and future “information services” offered by the survivor(s) of the merger. These should be provided on “fair, reasonable, and non-discriminatory terms”. Those terms should include timely support, competitive and flexible wholesale pricing, and vigilant adherence to CPNI Rules concerning confidentiality. This means an immediate inclusion of 256k and 6Mb DSL products to the wholesale line up. Consistent with the ATT-SBC merger, FISPAs seek a commitment to offering “naked DSL” and DSL on CLEC UNE circuits. This would need to be a ten year commitment to allow alternative wholesale avenues to develop.

Paul F. Rice, Executive Director  
FISPA  
(731) 423-2645  
[director@fispas.org](mailto:director@fispas.org)